

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:12-CR-339-D
No. 5:15-CV-358-D

ERIC BRANCH,)	
)	
Petitioner,)	
)	
v.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

On July 27, 2015, Eric Branch (“Branch”) moved to vacate, set aside, or correct his 180-month sentence. See [D.E. 121]; 28 U.S.C. § 2255. Branch contends that his lawyer Susan Thompson rendered ineffective assistance of counsel by failing to file a notice of appeal. See [D.E. 121] 4; [D.E. 129]. On September 14, 2015, the government moved to dismiss Branch’s motion for failure to state a claim upon which relief can be granted and argued that Branch’s section 2255 motion is untimely under 28 U.S.C. § 2255(f)(1). See [D.E. 126, 127]; Fed. R. Civ. P. 12(b)(6). On November 9, 2015, Branch replied. See [D.E. 129].

Viewing the record in the light most favorable to Branch, Branch’s motion is timely under 28 U.S.C. § 2255(f)(4). Compare Hannigan v. United States, No. 7:09-CR-133-D, 7:14-CV-122-D, 2015 WL 1056329, at *3–11 (E.D.N.C. Mar. 10, 2015) (unpublished) with [D.E. 129] 1–3. Moreover, resolving Branch’s ineffective-assistance claim requires factual findings and credibility determinations. See United States v. Tidd, 582 F. App’x 242 (4th Cir. 2014) (per curiam) (unpublished); Davis v. Zahradnick, 600 F.2d 458, 459–60 (4th Cir. 1979) (per curiam). Accordingly, the court DENIES the government’s motion to dismiss [D.E. 126] and REFERS

Branch's ineffective-assistance claim to Magistrate Judge Gates for a prompt evidentiary hearing and memorandum and recommendation. See, e.g., Diaz v. United States, Nos. 7:09-CR-100-D, 7:11-CV-43-D, [D.E. 310] (E.D.N.C. Nov. 12, 2014) (memorandum and recommendation) (unpublished), adopted, 2014 U.S. Dist. LEXIS 177775 (E.D.N.C. Dec. 29, 2014) (unpublished); Rahman v. United States, Nos. 7:08-CR-126-D, 7:10-CV-69-D-3, [D.E. 71] (E.D.N.C. Aug. 27, 2013) (memorandum and recommendation) (unpublished), adopted, 2013 WL 5230610 (E.D.N.C. Sept. 16, 2013) (unpublished).

SO ORDERED. This 19 day of November 2015.


JAMES C. DEVER III
Chief United States District Judge